

Message

From: Hough, Palmer [Hough.Palmer@epa.gov]
Sent: 2/6/2019 6:26:25 PM
To: Hurl, Kathy [Hurl.Kathy@epa.gov]
CC: Bennett, Brittany [bennett.brittany@epa.gov]; Chemerys, Ruth [Chemerys.Ruth@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]
Subject: RE: Comments from the state of MN on the 404(g) rule that may be of interest to the mitigation rule revision.

Thanks for sharing Kathy

From: Hurl, Kathy
Sent: Wednesday, February 06, 2019 12:07 PM
To: Hough, Palmer <Hough.Palmer@epa.gov>
Cc: Bennett, Brittany <bennett.brittany@epa.gov>; Chemerys, Ruth <Chemerys.Ruth@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>
Subject: Comments from the state of MN on the 404(g) rule that may be of interest to the mitigation rule revision.

“Applicability of the Federal Mitigation Rule

We recommend that EPA consider clarifying the applicability of the Federal Mitigation Rule (40 CFR Part 230) for a state - assumed program, most importantly with respect to the role of the Corps in the review and approval of mitigation banks and in - lieu fee (ILF) projects. We view the establishment and oversight of mitigation sites as an inseparable part of a permitting program that should be the responsibility of the state if it can demonstrate, to EPA’s satisfaction, that the program as a whole provides an equivalent level of protection for aquatic resources. In a state like Minnesota with a significant number of wetland banks, a scenario where the state assumes permitting approval but not the responsibility for review and approval of wetland banks would complicate decision making processes and retain a system of redundant state and federal mitigation bank reviews.

Separating the decision authority for the impacts from the decision authority for establishing the corresponding mitigation would be illogical and contrary to the goals of compensatory mitigation. In addition, under an assumption scenario, a dual decision authority (by the Corps and state) on the same project could create complications as the state’s decision would already convey Section 404 authority.

For state -sponsored ILF programs, we acknowledge that federal oversight is required to satisfy the requirements in the Federal Mitigation Rule, but we encourage EPA to clarify that the oversight would be provided by the EPA in the event of state assumption (rather than the Corps). EPA should also clarify whether the Interagency Review Team (IRT) exists under a state-assumed program and, if so, how it would function, including for the review of banking and ILF projects. As we understand it, if the IRT exists under a state -assumed program, the state would chair it for banking and ILF projects, as well as for activities proposing wetland impacts.”

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